**Before the**
**Federal Communications Commission**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Developing a Unified Intercarrier | ) | CC Docket No. 01-92 |
| Compensation Regime | ) | |

# Reply Comments of Ronan Telephone Company and Hot Springs Telephone Company


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Ronan Telephone Company (Ronan) and Hot Springs Telephone Company (HSTC) respectfully submit the following Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking (FCC 05-33, Released March 3, 2005):

## I. Introduction

Ronan Telephone Company and Hot Springs Telephone Company are small rural ILECs located in sparsely populated rural areas of western Montana. Both companies are located on the Flathead Indian Reservation, the home of the Confederated Salish Kootenai Tribe.

Ronan and HSTC are high cost rural companies, that have continued to offer outstanding and affordable universal service in their service areas, including universal provision of broadband (DSL) service. However they are struggling with: (1) unlevel competitive playing fields among carriers due to lack of regulatory parity, (2) onerous and ambiguous state and federal regulations and rulings, (3) attempting to collect compensation from all carriers that utilize their network, (4) revenue risks due to regulatory uncertainty and changes, and, (4) the high costs of staying abreast of the constantly changing legal and regulatory telecommunications environment. The current access charge and intercarrier compensation systems have flaws, but on the whole, they have been able to maintain universal basic telephone service for Americans at affordable rates. Most of the plans offered in this proceeding propose drastic and far reaching changes to a system that has largely been successful. Therefore, Ronan and HSTC suggest a cautious and measured approach to reform, which is directed specifically at the problem areas and does not radically reform a largely successful system.

## II. Bill and Keep Proposals

Ronan/HSTC concur with the parties who have expressed opposition to the various "bill-and-keep" proposals submitted in this Docket. We believe that bill-and-keep proposals are clearly inconsistent with the Telecommunications Act, which requires recovery of compensation by each carrier, of the costs incurred for transport and termination (*See e.g.*, 47 U.S.C. §252(d)(2)(A)(i)); and also inconsistent with the existing access charge regime of compensation for both originating the terminating traffic (*See,* 47 U.S.C. §251(g)). Bill-and-keep is only appropriate in very limited circumstances-- when the traffic flows between the two carriers <u>and</u> the costs of the interconnecting carriers are equal. Otherwise, any implicit subsidies that may remain in the current compensation mechanisms are reversed, and instead bill-and-keep would result in the rural wireline networks (and their customers) subsidizing the other carriers --- a dramatic step which is directly contrary to the universal service goals of the Act and state universal service laws, and will create a host of new problems. In a rural environment, bill-and-keep is inappropriate due to the lack of cost and traffic volume equality, and the severe detriment that would result to goals of universal service, unless interconnecting carriers pay reasonable and cost-compensatory rates for their use of the rural networks. The actual costs to terminate traffic in rural areas are obviously significantly above zero, this basic fact cannot be refuted. It is sound public policy, consistent with law and economics, to set cost compensatory rates for the use of each carrier s network.

### III. Universal Service Fund - Size, Enforcement and Cross-Subsidies

Most of the proposals before the Commission for intercarrier compensation reform would dramatically increase the size of the existing Federal Universal Service Fund. The USF Fund is already under close political scrutiny, as a result of size, abuse, and enforcement issues. The Fund has increased in size tremendously since 1996. And, recent incidents of fraud and abuse have heightened scrutiny. Dramatically enlarging the fund again through intercarrier compensation reform would only exacerbate these problems and future political scrutiny, which would jeopardize the future integrity and continued viability of the Fund, and thereby endanger the preeminent goal of universal service served by the Fund (*See generally*, 47 U.S.C. §254(b) and 47 C.F.R. §54.101). Ronan/HSTC therefore urge the Commission to consider these broad policy issues when studying the plans that propose large increases to the size of the USF Fund.

The basic economic principles involved should also be considered. Namely, a universal service and compensation system that relies increasingly on government subsidies, instead of cost compensatory mechanisms, and which shifts costs from the cost causers (carriers that use the embedded infrastructure) to a government administered portable subsidy system, is economically inefficient, detrimental to the development of economically viable competition in the long run, and contrary to the basic principles of our capitalist economy and public utility rate regulation system.

The increasing size of the USF Fund also increases the danger of inefficient and illegal cross-subsidies, as USF funds are improperly used to finance competitive ventures into non-basic telecommunications services and services outside of an incumbent s study area. This practice is inconsistent with law (See e.g. 47 C.F.R. §54.101 and 47 U.S.C. §254(k)), the principles of the universal service fund (47 U.S.C. § 254(b)), and results in economically inefficient subsidized competition.

## IV. Regulatory Parity

Many of the problems identified in this Docket are a result of the lack of regulatory parity: ILECs, BOCs, CLECs, wireless carriers, cooperatives, VoIP providers, cable, and other of telecommunications service providers, are subject to divergent regulatory and legal requirements at the state and federal levels. For example, cooperatives and wireless carriers are exempt from the jurisdiction of the Montana Public Service Commission, CLECs are subject to minimal regulatory oversight, while wireline ILECs are subject to full Montana PSC regulatory authority. This lack of regulatory parity prevents the uniform and reasonable application of non-discriminatory and competitively neutral regulations. This creates an unlevel competitive playing field which places fully regulated small rural companies at a severe competitive disadvantage. For example, the Major Trading Area rule applicable to CMRS-LEC traffic (47 C.F.R. §51.701) creates huge local calling areas in the western United States, while regulated rural ILECs are restrained by the state commission s authority over local exchange boundaries for (competing) toll services. Regulatory disparity effects issues far beyond intercarrier compensation -- including, state regulatory burdens which adversely effect the ability of wireline ILECs to effectively compete with unregulated wireless and cooperative carriers, disproportionate tax burdens, and dangers from anti-competitive cross-subsidization. Although some of these issues are beyond the scope of this Docket, they are significant obstacles to a truly fair and level competitive environment, and should therefore be carefully considered and addressed by the Commission before adopting any major intercarrier compensation reform proposal.

## V. Rural Alliance Plan

Ronan and HSTC express their general support for the Rural Alliance Plan. We note however that some details of the Rural Alliance Plan are not clear, and we do object to certain provisions of the Plan. In most rural areas, the proposed unified rate of two cents per minute would not compensate rural companies for the costs of their networks,[1] and would therefore create reverse implicit subsidies flowing to the other carriers, to the detriment of universal and affordable service. This would also unnecessarily increase the size of the USF Fund with the resulting adverse effects discussed in Section III above. We also oppose the concept of continuing the impromptu and improper mechanism of transiting traffic which has resulted in large volumes of traffic being completed without payment of access or other compensation

[1] This problem would be particularly acute in the sparsely populated areas of the western United States. Hot Springs Telephone Company, for example, serves an area with a density of only 3.3 subscribers per square mile, and many companies in eastern Montana and other western states have even lower service densities and therefore very high per subscriber costs.

in rural areas (See Section VI below). Ronan/HSTC are also opposed to the concept of preemption of state authority (See Section VII below).

**VI. Transiting Traffic**

Transiting traffic is a vexing problem for rural carriers, because the large/BOC carriers have refused to pay access charges on transiting traffic, and rural carriers have had extreme difficulties in attempting to secure payment from originating carriers. This problem has been the subject of extensive litigation in Montana, and has resulted in millions of dollars of lost revenues.[2] These funds should have been paid and available to support continued maintenance and investments in high quality, affordable rural service. However, Ronan and HSTC have been unable to collect these funds to date, because of the numerous technical and legal obstacles. Ronan and HSTC currently have unpaid accounts approaching $1.5 million for transiting traffic that has been terminated without compensation.

Collection of compensation for transiting traffic is highly problematical for rural carriers because:

(1) Rural carriers often lack the technical capability of measuring and identifying transiting traffic over common trunk groups. Without this information, the carrier has no way of measuring or billing the (unknown) carrier that originates the traffic, and the transiting carrier responsible for the common trunk group (Qwest in Montana) refuses to pay for

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[2] See e.g., *3 Rivers Telephone Cooperative et. al. v. U S West Communications*, 2003 U.S.Dist. LEXIS 24871 (2003)

transiting traffic.

(2) There are a host of legal problems in attempting to collect intercarrier compensation from originating carriers which use transiting facilities. The originating carrier usually never directly requests service from the terminating carrier and there is often no direct legal or contractual relationship between the two companies.

(3) If an originating carrier fails to pay compensation for terminating traffic, the terminating carrier usually lacks the technological capability of selectively blocking transiting traffic originating from only one carrier, and the originating carrier can continue to transmit its traffic with impunity. Local Number Portability requirements exacerbate this problem, since the originating carrier can no longer be accurately identified by the area code and prefix.

To move toward resolution of these issues, the Commission should mandate that incumbent ILECs can require direct connections with their network pursuant to 47 U.S.C. §251(a)(1), and that transiting and originating carriers cannot continue to use common trunk groups to avoid paying intercarrier compensation in accordance with tariffs, agreements or other payment arrangements.

For the reasons described above, Pursuant to Paragraph 212 of the Commission s Further Notice, Ronan/HSTC request that the Commission give separate consideration to smaller entities regarding transiting and CMRS traffic interconnection and intercarrier compensation.

## VII. State Commission Jurisdiction

Ronan and HSTC oppose any attempt to preempt state jurisdiction over intrastate telecommunications regulation. As a matter of law, the Telecommunications Act, as enacted in 1934 and amended in 1996, clearly preserves state jurisdiction of intrastate service:

> [with certain enumerated exceptions] nothing in this Act shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, . . .
> 47 U.S.C. §152(b) (1934)
>
> No implied effect. This Act and the amendments made by this Act shall not be construed to modify, impair, or supercede Federal, State or local law unless expressly so provided in such Act or amendments.
> Telecommunications Act of 1996, Sec. 601(c), Pub.L. No. 104-104, §601(c), 110 Stat. 143 (reprinted in Note following 47 U.S.C. §152)
>
> *See also*, 47 U.S.C. §§152(a), 221(b), 251(d)(3), and 414.

In addition to the statutory obstacles to preemption of state authority, and the broad Constitutional considerations based on the 10th Amendment of the Constitution, this Commission should also respect the strong policy considerations favoring preservation of state authority. State commissions have regulated intrastate telecommunications services for more than eighty years, applying their experience and expertise at the state level, to local issues and individual cases. The number and complexity of these matters require the resources and localized knowledge of state regulators. The FCC should very carefully consider the comments of state commissions in this matter, both on the substantive policy issues and the jurisdictional issue. Our system of federalism and shared jurisdiction, based on over two hundred years of precedent and successful application, should be weighed with the utmost respect. Any national unified approach to reform should therefore be based on state commission participation and consent.

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Respectfully Submitted,

/s/
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